

REMARKS

I. Introduction

Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

A detailed listing of all claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Upon entry of this Amendment, claim 26 will remain pending in the application.

It is acknowledged that this amendment is submitted after final rejection of the claims. However, because the foregoing amendments do not introduce new matter, and either place the application in condition for allowance or in better condition for appeal, entry thereof by the Examiner is respectfully requested.

II. November 4, 2004 Interview

Applicants thank Examiner Rao for his time and insights during a telephonic interview with Applicants' representative on November 4, 2004.

III. Response to Issues Raised by Examiner in Outstanding Office Action

Claim 26 is rejected by the Examiner under 35 U.S.C. § 103(a) as being obvious over Rouau et al. (J. Cer. Sci., 1998, Vol 28:63-70) ("Rouau") or Debyser et al. (WO 98/49278, 11-5-1998) ("Debyser"). The Examiner asserts that a person of ordinary skill in the art familiar with the teachings of Rouau would have been motivated to identify and select xylanases having a high degree of resistance to a xylanase inhibitor because it was known that: (a) xylanase inhibitors would negatively affect bread volume, and (b) an inhibitor is present in wheat flour. Applicants respectfully disagree.

i.

**ii. “Obvious to Try” is Not an
Acceptable Obviousness Standard**

The Examiner is erroneously applying an “obvious to try” standard. The Examiner asserts that because the inhibitor is inherently found in the wheat flour, the only option available for those skill in the art would be either to remove the inhibitor from the dough, which could be a costly procedure, or identify xylanases that are resistant to the inhibitor (Office Action, page 5).

First, removing the inhibitor from the dough or identifying xylanases that are resistant to the inhibitor were *not* the only options available for those skilled in the baking industry. For example, a more cost effective solution would be to add additional xylanase enzyme to offset the inhibitory effect of the inhibitor. Alternatively, a person of ordinary skill in the baking industry could adjust the amount of inhibitor present, which is suggested by Debyser on page 7, last paragraph.

Second, nowhere in the cited references is it taught or suggested to identify one or more xylanases having a high degree of resistance to a xylanase inhibitor using the claimed method. At best, the examiner is using an improper “obvious to try” standard, arguing that it would have been obvious for a person of ordinary skill in the art to identify one or more xylanases having a high degree of resistance to a xylanase inhibitor using the claimed method. However, “‘obvious to try’ has long been held to not constitute obviousness.” *In re Deuel*, 51 F.3d 1552, 1559, 34 USPQ2d 1210 (Fed. Cir. 1995).

**iii. The Food Industry Believes that Identification of
Uninhibited Xylanases is Extremely Important and
Innovative**

Attached as Exhibit 1 is a copy of a press release which shows that Danisco, the Assignee of the claimed invention, received a “most innovative ingredient award” at the Food Ingredients South America meeting for its uninhibited xylanase. Thus, clearly the food industry believes the identification of uninhibited xylanases is extremely important and it is described as “one of the most innovative developments in enzymes over the last 25 years”.

iv. Rouau Fails to Teach or Suggest the Claimed Method

The claimed method involves contacting a xylanase of interest with an isolated endo- β -1,4-xylanase inhibitor. In contrast, rather than using an isolated xylanase inhibitor, Rouau use a crude flour slurry for their experiments. Rouau fails to teach or suggest that the inhibitor is isolated. In fact, Rouau contains statements casting doubt as to whether the slurry contains one or several inhibitory compounds and whether the inhibitory compound(s) are endogenous to the wheat grain or of microbial origin. For example, on page 69, right panel, 8 lines from the bottom, Rouau states “[a]lthough it cannot be totally excluded that the inhibitor is of microbial origin, especially in the bran fraction, it may be reasonably assumed that this is one or several compounds in the wheat grain.” The term “assumed” is entirely at odds with the concept of certainty. The Compact Oxford English Dictionary (published 1996) gives the definition of assumption as “the act or an instance of accepting without proof”, whereas the definition of certainty is “an undoubted fact”; “an absolute conviction” or “a thing or person that may be relied on”. See Exhibit 2.

v. Debyser Fails to Teach or Suggest the Claimed Method

Debyser does not teach or suggest that the isolated inhibitor is useful to specifically identify and prepare one or more xylanases having a high degree of resistance to the inhibitor, as required by the claimed invention. The Examiner acknowledges this deficiency in Debyser, but asserts that one skilled in the art would be motivated to identify and select xylanases having a high degree of resistance to the inhibitor because it was known that: (a) xylanase inhibitors would negatively affect bread volume, and (b) an inhibitor is present in wheat flour. This line of reasoning constitutes an improper use of hindsight to reconstruct the claimed invention. The Examiner is erroneously relying on Applicants’ disclosure as a basis for asserting a motivation to modify the Debyser teachings.

vi. The Examiner’s Rejection is Based on Hindsight

At the time of the invention, good dough products were produced with xylanase inhibitors present in the dough. The presence of the inhibitors was not viewed as a barrier by the baking industry. While it may have been known that a controlled level of addition of xylanase enzyme could have a positive effect on dough volume, it was not known that the

endogenous level of inhibition of the enzyme has a negative effect. Since the discovery of a negative effect of the inhibitor could have only be established by removing the inhibitory effect, the suggestion that a negative effect of the inhibitor could be predicted is flawed and based on hindsight.

CONCLUSION

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

It is acknowledged that the foregoing amendments are submitted after final rejection. However, because the amendments do not introduce new matter or raise new issues, and because the amendments either place the application in condition for allowance or at least in better condition for appeal, entry thereof by the Examiner is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant(s) hereby petition(s) for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date Nov 5, 2004

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Danisco wins most innovative ingredient award

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At the Food Ingredients South America in São Paulo, Danisco won the "Most Innovative Ingredient of the Year" award with its new enzyme GRINDAMYL™ POWERBake 7000 - a unique and uninhibited xylanase with superior tolerance to grain and flour batch variations.

This revolutionizing enzyme represents one of the most innovative developments in enzymes over the last 25 years. It is an uninhibited xylanase, not suffering the interference of xylanase inhibitors naturally present in different flours. As a consequence, it has superior performance compared to already known xylanases in the market. Among the various benefits it provides to the food industry we can highlight: uniform performance in flour from batch to batch; high dough stability and extensibility; better tolerance towards changes in process parameters; improved crumb structure; better bread volume and appearance.

The jury emphasized that this new enzyme will innovate the flour market as when working with POWERbake™ 7000, the millers can increase the flour extraction, while keeping the same good bread quality and volume. POWERbake™ 7000 performs better than other xylanases present on the market with high fiber content in the flour.

"Based on this new technology, countries that are dependent of wheat imports will benefit of the flexibility on importing wheat from different regions while still keeping the same quality of final product. The millers are now enabled to sell a more standardized flour quality at the same time they reduce costs in research and development" says Déia Vilela, Business Manager, Enzymes, Latin America.

The new bacterial xylanase from Danisco is being commercialized at equal cost-in-use level of other commercial xylanases, giving the baking

industry improved competitiveness.

The Danisco team is very proud of this award as it strengthens the fact that our company is a leading provider of knowledge-based ingredients, being extremely focused on the challenges that our customers face. Danisco invests significant efforts on research and development to meet today's demands and winning such award is a great encouragement to our continuous innovation work.

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pic13357.jpg)

From left: Márcia Berimbau -
Innovation Director South
America, Heloisa Fujihara - Bakery
Technologist, Déia Vilela Reyes -
Business Manager Bakery Enzymes Latin
America, Tjerk de Ruiter - SVP Global
Sales & Marketing, Brian Jones - VP
Latin America, Zacarias Karacristo -
President South America

The Oxford Compact English Dictionary

Edited by
Della Thompson

Oxford
OXFORD UNIVERSITY PRESS

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Oxford University Press, Great Clarendon Street, Oxford OX2 6DP

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First published 1996

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British Library Cataloguing in Publication Data
Data available

Library of Congress Cataloging in Publication Data
The Oxford Compact English Dictionary / edited by Della Thompson.

1. English language—20th century—Dictionaries.
2. English language—New words—Dictionaries.

I. Thompson, Della F.
PE1628.O8634 1996 423—dc20 96-24623
ISBN 0-19-860064-X

10 9 8 7 6 5

Typeset in Arial and Swift by Selwood Systems
Printed in Great Britain
by Clays Ltd
Bungay, Suffolk

Preface

Guide to the Use of the Dictionary

Abbreviations used in the Dictionary

Note on Proprietary Status

The Oxford Compact English Dictionary

Appendices

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assertion | assure

one's rights). [based on Latin *asserere* 'claimed, declared']

assertion *n.* 1 a declaration; a forthright statement. 2 the act or an instance of asserting. 3 (also *self-assertion*) insistence on the recognition of one's rights or claims.

assertive *adj.* 1 tending to assert oneself forthright, positive. 2 dogmatic. *c.* assertively *adv.* assertiveness *n.*

assess *v.t.* 1 to estimate the size or quality of. 2 to estimate the value of (a property) for taxation etc. 3 to fix the amount of (a tax etc.) and impose it on a person or community. 4 to fine or tax (a person, community, etc.) in or at a specific amount (assessed them £100). [from Latin *assidere* 'to sit by' (in judgement)] *c.* assessable *adj.* assessment *n.*

assessor *n.* 1 a person who assesses taxes or estimates the value of property for taxation or Brit. insurance purposes. 2 a person called upon to advise a judge, committee of inquiry, etc. on technical questions.

asset *n.* 1 a useful or valuable quality. 2 a person or thing possessing such a quality or qualities (is an asset to the firm). 3 (usu. in pl.) property and possessions, esp. regarded as having value in meeting debts, commitments, etc. [based on Old French *assez* 'enough']

asset-stripping *n.* the practice of taking over a company and selling off its assets to make a profit. *c.* asset-stripper *n.*

assessable *adj.* 1 declare solemnly or emphatically. [from Latin *asserere*, based on *severe* 'severe'] *c.* assessment *n.*

asshole *N. Amer. var. of ARSEHOLE.*

assiduity *n.* constant or close attention to what one is doing. [from Latin *assiduus*]

assiduous *adj.* persevering, hard-working. [based on Latin *assiduus* 'to sit by', hence 'to apply oneself closely to'] *c.* assiduously *adv.* assiduousness *n.*

assign *v.t.* 1 to allot as a share or responsibility. 2 to appoint to a position, task, etc. 3 to fix (a time, place, etc.) for a specific purpose. 4 (usu. by to) ascribe or refer to (a reason, cause, etc.) (assigned the manuscript to 1832). 5 (usu. by to) transfer formally to. *c.* n. a person to whom property or rights are legally transferred. [from Latin *assignare* 'to mark out to'] *c.* assignable *adj.*

assignment *n.* 1 an appointment to meet. 2 a secret appointment, esp. between illicit lovers. 3 the act or an instance of assigning or being assigned.

assignee *n.* 1 a person appointed to act for another. 2 an assign.

assignment *n.* 1 something assigned, esp. a task allotted to a person. 2 the act or an instance of assigning or being assigned. 3 a legal transfer by the document effecting this.

assimilate *v.t.* 1 to absorb (food etc.) into the body. 2 to absorb (information etc.) into the mind. 3 to absorb (people) into a larger group. 2 make like; cause to resemble. [based on Latin *assimilare* 'likened'] *c.* assimilable *adj.* assimilation *n.* assimilative *adj.* assimilator *n.* assimilatory *adj.*

assist *v.* 1 to help (a person, process, etc.) (assisted them in running the playgroup). 2 to attend or be present (assisted in the ceremony).

[from Latin *assistere* 'to take one's stand by'] *c.* assistance *n.*

assistant *n.* 1 a helper. 2 (often attrib.) a person who assists. 3 Brit. = SHOP ASSISTANT.

assize *n.* (usu. in pl.) hist. a court sitting at intervals in each county of England and Wales to administer the civil and criminal law. [from Old French *assise* 'sitting, assessment']

ass-kicking *N. Amer. var. of ARSE-KICKING.*

associate *v.t.* 1 to connect in the mind (associate holy with Christmas). 2 to join or combine. 3 to make oneself a partner; declare oneself in agreement (associate myself in your endeavour). 4 to combine for a common purpose. 5 to meet frequently or have dealings. *c.* 1 a business partner or colleague. 2 a friend or companion. 3 a subordinate member of a body, institute, etc. *c.* *adj.* 1 joined in companionship, function, or dignity. 2 allied in the same group or category. 3 or less than full status (associate member). [from Latin *associatus*] *c.* associateship *n.*

association *n.* 1 a group of people organized for a joint purpose. 2 the act or an instance of associating. 3 fellowship; human contact or cooperation. 4 a mental connection between ideas. *c.* associational *adj.*

Association Football *n.* Brit. football played by teams of 11 players with a round ball which may not be handled during play except by the goalkeeper.

associative *adj.* of or involving association.

assonance *n.* the resemblance of sound between two syllables in nearby words, arising from the rhyming of two or more accented vowels, but not consonants, or the use of identical consonants with different vowels. [based on Latin *assonare* 'to respond to']

assort *v.* 1 to classify or arrange in groups. 2 to suit; harmonize with (just. in phr. assort ill or well with). [from Old French *assortir*]

assorted *adj.* 1 of various sorts put together; miscellaneous. 2 sorted into groups. 3 matched (ill-assorted; poorly assorted).

assortment *n.* a set of various sorts of things or people put together.

assuage */ə'sweɪʃ/ v.t.* 1 soothe (a person, pain, etc.). 2 appease or relieve (an appetite or desire). [based on Latin *suaviter* 'sweet'] *c.* assuagement *n.*

assume *v.t.* 1 accept as being true, without proof, for the purpose of argument or action. 2 pretend (ignorance etc.). 3 undertake (an office or duty). 4 take or put on oneself or itself (an aspect, attributes, etc.) (the problem assumed immense proportions). 5 arrogate, usurp, or seize (credit, power, etc.) (assumed to himself the right of veto). [from Latin (*ad*) *sumere* 'to take (to oneself)']

assumption *n.* 1 the act or an instance of assuming. 2 the act or an instance of accepting without proof. 3 a thing assumed in this way. 4 (Assumption) the reception of the Virgin Mary bodily into heaven, according to Roman Catholic doctrine. [related to ASSURE]

assurance *n.* 1 a positive declaration that a thing is true. 2 a solemn promise or guarantee. 3 esp. Brit. insurance. 4 certainty. 5 a self-confidence. 6 impudence.

assure *v.t.* 1 to make (a person) sure; convince

(assured him of my sincerity). 2 to tell (a friend) (assured him the bus went). 3 to make certain of; ensure the (of) (will assure her success). 4 to make overthrow etc.). 5 esp. Brit. insure *adj.* a guaranteed. 6 self-confident Latin *securus* 'safe, secure'] *c.* assuredly *adv.* certainly.

astatine */æs-ti-ti-n/ n.* Chem. element, the heaviest of the halogens, occurs naturally.

aster *n.* a plant of the genus *Aster* with bright rayed flowers. [from 'star']

asterisk *n.* a symbol (*) used in writing to mark words etc. to stand for omitted matter, etc. *c.* an asterisk. [from Greek *asteriskos* 'small star']

asteroid *n.* 1 a small rocky body in the solar system. 2 a starfish. [based on G. *asteroideus* *adj.*]

asthma *n.* a respiratory disease, symptoms of difficult breathing. [from Greek *asthma* 'to breathe hard']

asthmatic *adj.* relating to or suffering from asthma. *c.* a person suffering from asthma. *c.* asthmatically *adv.*

astigmatism *n.* a defect in the eye resulting in distorted images, prevented from meeting at a point. [based on Greek *astigmatos* 'without a point'] *c.* astigmatic *adj.*

astilbe *n.* a plant of the genus *Astilbe*, with plumelike heads of flowers. [from Greek *astilbe* 'glittering', from the incoercible flowers]

astral *adj.* 1 in motion out of bed (already astral). 2 out of bed (already astral). 3 out of bed (already astral).

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'head' + pour pot
y and permanently
owl). 2 of or relating
). e.n. 1 a ceramic
tance used to make
Greek terraces 'pots'

, makes ceramics
roducts collectively
treated as sing.) the
ies.

, any kind of grain
producing this, e.g.
st food made from
y to edible grain or
ret. Roman goddess

lums or cerebella)
e back of the skull
nates and regulates
small 'thick brain']

ala. 2 intellectual
rebrally adv.
each of the two
thrum.

on marked by weak-
tion of the limbs.
f the brain. c.cer-

cerebrum]. (from

cain and spine.
the brain and its

be principal part of
acted in the front
unigrates complex
ns. [Latin, literally

r concerning ritual
emorial bow). e.n. 1
rmalities or behav-
sion (with all due
n n. ceremonious)

WONIAL adj. 2 full of
rites. 3 having or
istic observance or
sly adv. cere-

formal religious or
ilities (ceremony of
excessively polite
t great ceremony).
t on the observance
aermonia 'religious

(at clear red colour,
rally 'cherry')

retalic element of
n the manufacture
r the asteroid Ceres,
e time (1801)

cert) 1 an event or
happen. 2 a horse

certain e adj. 1 a confident, convinced (certain
that I was here). 2 indisputable (it is certain that
he is guilty). 3 a that may be relied on to happen
(it is certain to rain). 4 destined (certain to become
a star). 5 definite, unfailing, reliable (a certain
indication of the coming storm; his touch is certain).
6 (of a person, place, etc.) that might be specu-
lated, but is not (a certain lady; of a certain age). 7
some though not much (a certain reluctance). 8 (of
a person, place, etc.) existing, though probably
unknown to the reader or hearer (a certain John
Smith). 9 pron. (treated as pl.) some but not all
(certain of them were wounded). 10 for certain
without doubt, make certain = make sure (see
sure). [from Latin *certain* 'settled']

certainly adv. 1 undoubtedly, definitely. 2 con-
fidently. 3 yes; by all means.

certainly n. (pl. -ies) 1 an undoubted fact. 2
a certain prospect (his return is a certainty). 3 an
absolute conviction (has a certainty of his own
worth). 4 a thing or person that may be relied
on (a certainty to win the Derby).

Cert. Ed. abbr. (in the UK) Certificate in Edu-
cation.

certifiable adj. 1 able or needing to be certified.
2 coll. insane.

certificate e.n. a formal document attesting a
fact, esp. birth, marriage, or death, a medical
condition, a level of achievement, a fulfilment
of requirements, ownership of shares, etc. e.vtr.
(esp. as *certificated* adj.) provide with or license
or attest by a certificate. [related to *CERTIFY*]
certification n.

Certificates of Secondary Education n.
Brit. 1 an examination set for secondary-school
pupils in England and Wales, replaced in 1988
by the General Certificate of Secondary Edu-
cation (GCSE). 2 the certificate gained by
passing it.

certified cheque n. a cheque the validity of
which is guaranteed by a bank.

certified mail n. N. Amer. = *REGISTERED MAIL*.

certify vtr. (-ies, -ied) 1 make a formal state-
ment of; attest up (certified that he had
witnessed the crime). 2 declare by certificate (that
a person is qualified or competent) (certified as a
trained bookkeeper). 3 officially declare insane.
[based on Latin *certus* 'certain']

certitude n. a feeling of absolute certainty or
conviction.

cerulean /si-roo-li-in/ literary e adj. deep blue
like a clear sky. e.n. this colour. [from Latin *caeruleus* 'sky blue']

cervelat /sɜrv-el-ah/ n. a kind of smoked pork
sausage. [from Italian *cervelat*]

cervical adj. Anat. 1 of or relating to the neck
(cervical vertebrae). 2 of or relating to the cervix.
[based on Latin *cervix* 'neck']

cervical screening n. examination of a large
number of apparently healthy women for cer-
vical cancer.

cervical smear n. esp. Brit. a specimen of cellu-
lar material from the neck of the womb spread
on a microscope slide for examination for can-
cerous cells.

cervix n. (pl. *cervices* /sɜrv-i-seez/) Anat. 1 the
neck. 2 the neck of the womb. [Latin]

Cesarean (also Caesarian) US Med. var. of *CAS-*
SAREAN.

certain | chafing dish

cesium US var. of *CÆSIUM*.

cessation n. 1 a ceasing (cessation of the truce). 2
a pause (resumed fighting after the cessation). [based
on Latin *cessare* 'to cease']

cession n. 1 the ceding or giving up (of rights,
property, and esp. of territory by a state). 2 the
territory etc. so ceded. [from Latin *cessio*]

cesspit n. 1 a pit for the disposal of refuse. 2 =
cesspool. [based on obsolete *cess* 'peatbog']

cesspool n. 1 an underground container for
the temporary storage of liquid waste or sewage.
2 a centre of corruption, depravity, etc.

cetacean e.n. any marine mammal of the
order Cetacea, with streamlined hairless body
and dorsal blowhole for breathing. e adj. of cet-
aceans. [based on Greek *ketos* 'whale']

cetane n. Chem. a colourless liquid hydrocarbon
of the alkane series used in standardizing
ratings of diesel fuel. [from spermaceti, from
which it was derived]

Ceylon satinwood see *SATINWOOD* 1a.

Cf synth. Chem. the element californium.

cf. abbr. compare. [Latin *confer* 'compare']

c.f. abbr. carried forward.

CFC abbr. Chem. chlorofluorocarbon, any of a
class of usu. gaseous compounds of carbon,
hydrogen, chlorine, and fluorine, used in
refrigerants, aerosol propellants, etc., and
harmful to the ozone layer in the earth's atmo-
sphere.

CFE abbr. Brit. College of Further Education.

cg abbr. centigram(s).

cgs abbr. centimetre-gram-second.

cha var. of *CHAI*.

Chablis /shab-lee/ n. (pl. same) a dry white bur-
gundy wine. [from Chablis in E. France, where it
is produced]

cha-cha n. (also *cha-cha-cha*) 1 a ballroom
dance with a Latin American rhythm. 2 music
for or in the rhythm of a cha-cha. [Latin Amer-
ican Spanish]

chador n. (also *chadar*) a large piece of cloth
worn in some countries by Muslim women,
wrapped around the body to leave only the face
exposed. [from Persian *chadar* 'sheet, veil']

chafe e.v. 1 tr. & intr. make or become sore or
damaged by rubbing. 2 tr. rub. 3 tr. & intr. make
or become annoyed; fret (was chafed by the delay).

e.n. 1 an act of chafing. 2 a sore resulting
from this. 3 a state of annoyance. [from Latin
caligare 'to heat']

chaffer n. any of various large slow-moving
strong-flying beetles of the family Scarabaeidae.
[Old English]

chaff e.n. 1 the husks of corn or other seed
separated by winnowing or threshing. 2
chopped hay and straw used as fodder. 3 light-
hearted joking; banter. 4 worthless things;
rubbish. e.vtr. 1 tease; banter. 2 chop (straw
etc.). [Old English]

chaffer vtr. haggle; bargain. [Middle English]
= *chafferer* n. *chaffy* adj.

chaffinch n. a common European finch, *Prin-
gilla caelebs*, the male of which has a blue-grey
head with pinkish cheeks and breast. [Old
English, literally 'chaff finch', from its foraging
around barns etc.]

chafing dish n. 1 a cooking pot with an outer

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